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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,547	12/17/2003	Samuel D. Griggs	9389-11	8315
7590	09/08/2004		EXAMINER	
Julie H. Richardson Myers Bigel Sibley & Sajovec, P.A. P.O. Box 37428 Raleigh, NC 27627			SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/738,547	GRIGGS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	John Sipos	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,7,8,22,23,47 and 48 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,6,10-21,24-46 and 49-59 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/03,3/22&amp;4/19/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____.                                    |

***RESTRICTION***

This application contains claims directed to the following patentably distinct species of the claimed invention:

Figure (none) pentagon claims 3,22,47

Figure 3,9, claims 6-10,24-27,49-52

Figure 7,8, claims

Figure 13-17, claims 5,23,48

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1 , 2 , 4 , 11-21 , 28-46 and 53-59 are generic.

During a telephone conversation with Ms. J. Richardson on September 2, 2004 a provisional election was made with traverse to prosecute the invention of Figure 3, claims 6-10,24-27,49-52. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3,5,7,8,22,23,47 and 48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after

the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 59** is rejected under 35 U.S.C. ' 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedence in the claims to the word "meat". Claim 59 should depend on claim 58 and not 41.

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### ***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Claims 1,2,4,9,10,12,13,20,21,26,27,29,38,40-46,51,52,54,57 and 59** are rejected under 35 U.S.C. ' 102(e) as being anticipated by the patent to Ailey (6,729,102). The patent to Ailey shows a product netting machine comprising a base 25, a chute 40, a product receiver 65 with movable guides 72 at the discharge end of the chute, voider gates 48,50 to form a rope section, a handle and loop former 90 comprising of transversely and rotatably moving clamshells 92,94 and clippers 109,111 to clip the rope section of the netting. The chute comprises of a non-circular upper body and a planar floor with parallel ribs 43.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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**Claims 1,2,4,6-10,14,20,21,24-27,31,38,39,41,44-46 and 49-52** are rejected under 35 U.S.C. ' 102(b) as being clearly by the patent to Marietta (3,945,171). The patent to Marietta shows a product chute 14 with a flared upstream end 12 through which the product is fed and then periodically clipped to form individual packages. The chute comprises of a tubular body with interior generally oval shape with planar floor supported by bracket 13.

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The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 11,14-19,28,31-37,39,53,55,56 and 58** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Ailey (6,729,102).

The use of angled chute ends (claims 11,14,28&53), contoured supporting recesses (claims 15,32), handles (claims 18&35), sensors to automate the operation (claims 17,34&56), releaseable brackets (claims 37&55) and various food products in the netting (claims 56&58) are well known in the art and their use in the Ailey operation would have been obvious to one of ordinary skill in the art for their inherent and known advantages.

**Claims 6-8,24,25,49 and 50** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Ailey (6,729,102) in view of Marietta (3,945,171). The Ailey device lacks the use of a generally oval shaped chute. It would have been obvious to one skilled in the art to shape the chute of Ailey as a generally oval as taught by Marrietta to better permit the product to conform to the chute.

**Claims 11-13,15-19,28-30,32-37,40,42,43, and 53-59** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Marietta (3,945,171).

The use of angled chute ends (claims 11,28&53), isotropic netting under tension (claims 12,13,29,30,42,43&54), contoured supporting recesses (claims 15,32), handles (claims 18&35), sensors to automate the operation (claims 17,34&56), releaseable brackets (claims 37&55), tilted

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chutes (claim 40) and various food products in the netting (claims 57-59) are well known in the art and their use in the Longo operation would have been obvious to one of ordinary skill in the art for their inherent and known advantages.

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### ***ADDITIONAL REFERENCES CITED***

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **(703) 308-2187**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is **(703) 308-1148**.



**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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